

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

NAPOLEON CAMPOS,

Plaintiff,

V.

**EAST EL PASO PHYSICIANS' MEDICAL
CENTER, LLC, dba FOUNDATION
SURGICAL HOSPITAL OF EL PASO**

Defendant.

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) **No. 3:20-CV-00091-DB**
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**DEFENDANT EAST EL PASO PHYSICIANS' MEDICAL CENTER, LLC,
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

NOW COMES Defendant, East El Paso Physicians' Medical Center, LLC, d/b/a Foundation Surgical Hospital of El Paso ("Defendant"), and files this its Original Answer and Affirmative Defenses to Plaintiff Napoleon Campos' ("Plaintiff") Original Complaint (the "Complaint"), filed on April 2, 2020, (Dkt. No. 1) and in response would show the Court as follows:

PARTIES

1. Defendant can neither admit nor deny the allegations made in paragraph 1, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

2. Defendant is a Texas limited liability company with its principal place of business in El Paso, Texas.

JURISDICTION AND VENUE

3. Defendant does not contest that this court has jurisdiction over this matter as set forth in Plaintiff's Application.

4. Defendant does not contest that this court is the proper venue for this matter as set forth in Plaintiff's Application.

FACTS

5. Defendant can neither admit nor deny the allegations made in paragraph 5, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

3. Defendant can neither admit nor deny the allegations made in paragraph 6, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

4. Defendant can neither admit nor deny the allegations made in paragraph 7, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

5. Defendant can neither admit nor deny the allegations made in paragraph 8, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

6. Defendant can neither admit nor deny the allegations made in paragraph 9, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

7. Defendant can neither admit nor deny the allegations made in paragraph 10, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

8. Defendant can neither admit nor deny the allegations made in paragraph 11, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

9. Defendant admits and agrees with the facts and allegations in the first sentence in paragraph 12. Defendant admits and agrees with the facts and allegations in the second sentence in paragraph 12. Defendant denies the facts and allegations as stated in the third sentence in

paragraph 12. Defendant admits and agrees with the facts and allegations in the last sentence in paragraph 12.

10. Defendant can neither admit nor deny the allegations made in the first sentence of paragraph 13, because Defendant lacks sufficient knowledge and/or lacks information to form a belief as to the truth of same. Defendant admits and agrees with the facts and allegations in sentences two and three of paragraph 12. Defendant can neither admit nor deny the allegations made in the last two sentences of paragraph 13, because Defendant lacks sufficient knowledge and/or lacks information to form a belief as to the truth of same.

11. Defendant admits and agrees with the facts and allegations in paragraph 13, excepting from its admission any truth or validity regarding the date Plaintiff received the document, as Defendant lacks sufficient knowledge and/or lacks information to form a belief as to the truth of same.

12. Defendant can neither admit nor deny the allegations made in paragraph 14, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

IV. CAUSES OF ACTION

COUNT 1: FRAUD.

13. Defendant here by adopts and incorporates by reference all statements and allegations contained in the paragraphs above is if set forth herein and further states:

14. Defendant can neither admit nor deny the allegations made in paragraph 16, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

15. Defendant can neither admit nor deny the allegations made in paragraph 17, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

16. Defendant can neither admit nor deny the allegations made in paragraph 18, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

COUNT 2: VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 PROMULGATED THEREUNDER BY THE SECURITIES AND EXCHANGE COMMISSION.

17. Defendant here by adopts and incorporates by reference all statements and allegations contained in the paragraphs above is if set forth herein and further states:

18. Defendant agrees and admits that paragraph 20 contains an accurate copy of the SEC Rule 10b-5.

19. Defendant agrees and admits that paragraph 20 contains an accurate statement of law.

20. Defendant can neither admit nor deny the allegations made in paragraph 22, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

COUNT 3: TEXAS SECURITIES ACT VIOLATION.

21. Defendant here by adopts and incorporates by reference all statements and allegations contained in the paragraphs above is if set forth herein and further states:

22. Defendant can neither admit nor deny the allegations made in paragraph 24, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

23. Defendant agrees and admits that paragraph 25 contains an accurate copy of Texas Securities Act § 33(A)(2).

24. Defendant can neither admit nor deny the allegations made in paragraph 26, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

25. Defendant can neither admit nor deny the allegations made in paragraph 27, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

COUNT 4: UNJUST ENRICHMENT.

26. Defendant here by adopts and incorporates by reference all statements and allegations contained in the paragraphs above is if set forth herein and further states:

27. Defendant can neither admit nor deny the allegations made in paragraph 29, because Defendant lacks sufficient knowledge and/or information to form a belief as to the truth of same.

AFFIRMATIVE DEFENSES

28. Defendant asserts that following affirmative defense is applicable to Plaintiff's Complaint:

29. Plaintiff's claim is barred by the doctrine of release, as Plaintiff was provided the information forming the basis of Plaintiff's claims by Defendant as soon as Defendant became aware.

30. Plaintiff's claim is barred by the doctrine of waiver, as Plaintiff was provided the information forming the basis of Plaintiff's claims by Defendant as soon as Defendant became aware.

31. Plaintiff's claim is barred by the doctrine of assumption of the risk, as Plaintiff was provided the information forming the basis of Plaintiff's claims by Defendant at the time that Plaintiff made his investment.

PRAYER

WHEREFORE, Defendant prays that Plaintiff's Complaint be dismissed, that Plaintiff go hence without day, and for all further relief to which Defendant is entitled to in equity or at law.

DATED: June 16, 2020

Respectfully submitted,

/s/Ken Coffman

KEN COFFMAN

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2020, I did electronically file and did so accordingly submit and transmit the hereto attached, Defendant's Original Answer and Affirmative Defenses to the Clerk of Court using the ECF System for such electronic filing.

/s/Ken Coffman

KEN COFFMAN